U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-

DATE: NOV. 25, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an associate professor of urology, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The Petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the Petitioner has not established that a waiver of a job offer would be in the national interest. On appeal, the Petitioner submits a brief.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. ISSUES

The Petitioner received a Doctor of Medicine degree from [redacted] in Iran. Accordingly, the Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." *Matter of New York State Dep't of Transp.* (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The Petitioner has established that his work as an associate professor of urology is in an area of substantial intrinsic merit and that the proposed benefits of his research concerning regeneration of the urinary sphincter and kidney would be national in scope. It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must show that his past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Furthermore, eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. At issue is whether the petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must exhibit a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

III. FACTS AND ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on May 5, 2014. At the time of filing, the Petitioner was working as an Associate Professor of Pediatric Urology at The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The Petitioner seeks to continue his medical research in the urology field. The record includes documentation of numerous journal articles that the Petitioner has written or co-written, and evidence demonstrating that his published work has been frequently cited. According to a Google Scholar citation index provided by the Petitioner, his published articles have garnered 188 citations by others in the field. For example, the submitted Google Scholar citation index reflects that the Petitioner's articles entitled and were cited to 42 and 36 times, respectively. The Petitioner also included copies of the journal articles in which independent medical researchers favorably cite to his work. For example, as noted on appeal, one article cites the Petitioner's work with clomiphene citrate as one of A substantial number of favorable independent citations for an article is an indication that other researchers are familiar with this work and may have been influenced by it.

Furthermore, the Petitioner provided letters of support from , Director of the Chancellor of and Chairman of the indicated that the Petitioner was a co-founder of the and was elected as its Editor-in-Chief. In addition, the Petitioner included a certificate from the in recognition of his contributions as a researcher and other official recognition from Iran. The submitted documentation, including the frequent citation of the Petitioner's work by independent researchers, is sufficient to demonstrate that the Petitioner's work has had a degree of influence on his field. The record establishes the significance of this Petitioner's research, as opposed to the general area of research, and identifies specific benefits attributable to his work that have influenced the field as a whole. We therefore find that the Petitioner's past record of achievement justifies a projection that he will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

IV. CONCLUSION

As discussed above, the record demonstrates that the benefit of retaining this petitioner's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, will be in the national interest of the United States.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of M-M-*, ID# 14494 (AAO Nov. 25, 2015)